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18 Attorneys for Plaintiff

19 **IN THE UNITED STATES DISTRICT COURT**
20 **DISTRICT OF ARIZONA**

21 EATON VETERINARY
22 PHARMACEUTICAL, INC.,
23 an Arizona corporation,

24 Plaintiff,

25 vs.

26 DIAMONDBACK DRUGS OF
27 DELAWARE, LLC,
28 a Delaware limited liability company,
DIAMONDBACK DRUGS, LLC,
an Arizona limited liability company,
MICHAEL R. BLAIRE, and
RORY J. ALBERT,

Defendants.

No.

COMPLAINT

Plaintiff Eaton Veterinary Pharmaceutical, Inc. (“Eaton”), through its undersigned attorneys of record, files this Complaint against defendants Diamondback Drugs of

1 Delaware, LLC., Diamondback Drugs, LLC, Michael R. Blaire, and Rory J. Albert
2 (collectively “Diamondback”) and states and alleges as follows:

3 **INTRODUCTION**

4 1. This is a lawsuit for patent infringement.

5 2. This lawsuit stems from the flagrant theft and misuse of valuable intellectual
6 property belonging to Eaton.

7 3. This intellectual property comprises a patented method of treating various
8 ophthalmic diseases in animals. The patent being infringed is U.S. Patent No. 6,930,127
9 (the “Patent”) attached as Exhibit A.

10 4. The invention comprises the administration of a non-aqueous substance to an
11 animal’s affected eye to treat ophthalmic disease, wherein the non-aqueous substance
12 contains a chemical called tacrolimus. The amount of tacrolimus in the substance ranges
13 from 0.00001% to about 10.0% by weight of the substance.

14 5. On July 30, 2013, a cease and desist letter along with a copy of the Patent was
15 sent to Michael R. Blaire, CEO of Diamondback Drugs of Delaware, and Diamondback
16 Drugs.

17 6. In complete disregard for Eaton’s intellectual property rights, defendants
18 willfully infringed Eaton’s patent by using the patented technology or inducing and
19 contributing to others’ use of the patented technology, knowing they did not have the right
20 to do so.

21 7. Defendants’ actions have infringed and continue to infringe Eaton’s patent.

22 8. Accordingly, at a minimum, Eaton seeks a reasonable royalty, together with
23 such other and further relief is available under 35 U.S.C. § 285.
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PARTIES

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2 9. Eaton is a limited liability company organized and existing under the laws of
3 the State of Arizona having an address of 711 E. Carefree Hwy, Suite 130, Phoenix, Arizona
4 85085. Eaton possesses all rights, title and interest in the Patent, including the right to sue
5 for infringement.

6 10. Defendants consist of two companies and two individuals. The companies are
7 Diamondback Drugs of Delaware, LLC which is a limited liability company organized and
8 existing under the laws of the State of Delaware, and Diamondback Drugs, LLC, a limited
9 liability company organized and existing under the laws of the State of Arizona.
10 Diamondback Drugs, LLC was organized in 2001 and is presently a member of
11 Diamondback Drugs of Delaware, LLC. On information and belief, both companies have
12 their principal place of business at 7631 E. Indian School Rd., Scottsdale, Arizona 85251.
13 The companies own and operate a veterinary pharmacy.

14 11. On information and belief, both defendant companies were founded by
15 Michael R. Blaire and Rory J. Albert who are named defendants in this lawsuit. Also on
16 information and belief, Michael Blaire holds the position of Chief Executive Officer in both
17 companies.
18

19 **JURISDICTION AND VENUE**

20 12. This is a patent infringement action brought under the patent laws of the
21 United States, 35 U.S.C. Section 1 *et seq.* Eaton seeks damages for patent infringement and
22 an injunction preventing Diamondback from inducing or contributing to others' use of
23 Eaton's patented technology without its permission.

24 13. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and
25 1338(a).
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1 14. This Court has personal jurisdiction over Diamondback because it has
2 purposefully availed itself of the privilege of conducting business within this State and this
3 district.

4 15. Venue in this district is proper under 28 U.S.C. §§ 1391 and 1400 because a
5 substantial part of the events giving rise to the claims asserted herein occurred in this
6 district, and Diamondback has committed acts of infringement in this district.

7
8 **COUNT I: PATENT INFRINGEMENT**

9 16. Eaton incorporates by reference the foregoing allegations as if fully set forth
10 herein.

11 17. On information and belief, Diamondback has committed and/or is continuing
12 to commit acts of infringement of the Patent under 35 U.S.C. § 271(b), (c) by inducing its
13 customers to use a method that infringes one or more claims of the Patent, and by
14 contributing to its customers' use of a method that infringes one or more claims of the
15 Patent.

16 18. Eaton has been damaged as a direct result of Diamondback's infringement of
17 the Patent. Eaton will continue to be damaged unless further infringement is enjoined.

18 19. Eaton is entitled under 35 U.S.C. § 284 to an award of damages adequate to
19 compensate Eaton for Diamondback's infringement of the Patent. Eaton is entitled to lost
20 profits or, in the alternative, a reasonable royalty for the infringement and use made of the
21 invention of the Patent by Diamondback, all together with interest and costs.

22 20. Diamondback continued to infringe the Patent after being put on notice by
23 Eaton at least as early as July 30, 2013.

24 21. On information and belief, Diamondback's past and continuing infringement
25 of the Patent has been and continues to be deliberate and willful.
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1 22. Diamondback' conduct warrants an award of treble damages pursuant to 35
2 U.S.C. § 284.

3 23. Moreover, this is an exceptional case that entitles Eaton to an award of
4 reasonable attorney fees under 35 U.S.C. § 285.

5 **COUNT II: WILLFUL INFRINGEMENT**

6 24. Eaton incorporates by reference his foregoing allegations as if fully set forth
7 herein.

8 25. Diamondback had actual notice of the patent and Eaton's infringement
9 allegations.

10 26. Diamondback' past and continuing infringement of the Patent has been
11 deliberate and willful.

12 27. Diamondback conduct warrants an award of treble damages pursuant to 35
13 U.S.C. § 284. Moreover, this is an exceptional case as set forth in 35 U.S.C. § 285
14 warranting an award of attorneys' fees.
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16 **DEMAND FOR JURY TRIAL**

17 Eaton demands trial by jury on all issues so triable. Eaton designates Phoenix,
18 Arizona as the place of trial.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Eaton respectfully prays that this Honorable Court enter relief as
21 follows:

22 A. A judgment that Diamondback has infringed the Patent;

23 B. A judgment and order permanently restraining and enjoining Diamondback and
24 its officers, directors, agents, servants, employees, attorneys, subsidiaries, affiliates, and all
25 those acting in concert with or under or through them, from using any methods or selling any
26 product that infringe one or more claims of the Patent, either directly or indirectly;
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1 C. A judgment and order requiring Diamondback to pay damages to Eaton
2 adequate to compensate it for defendant's wrongful infringing acts in accordance with 35
3 U.S.C. § 284;

4 D. A judgment and order requiring Diamondback to pay increased damages up to
5 three times, in view of their willful and deliberate infringement of the Patent;

6 E. A finding in favor of Eaton that this is an exceptional case under 35 U.S.C. §
7 285 and an award of Eaton its costs, including reasonable attorneys' fees and other expenses
8 incurred in connection with this action;

9 F. A judgment and order requiring defendant to pay Eaton pre-judgment interest
10 under 35 U.S.C. § 284 and post-judgment interest under 28 U.S.C. § 1961 on all damages
11 awarded; and
12

13 G. Such other and further relief as the Court deems just and appropriate.

14 DATED this 2nd day of June, 2014.

15 AIKEN SCHENK HAWKINS & RICCIARDI P.C.

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20 and

Pro hac vice pending

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